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8 **BEFORE THE**
9 **STRUCTURAL PEST CONTROL BOARD**
10 **DEPARTMENT OF PESTICIDE REGULATION**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation/Petition to
13 Revoke Probation Against:

14 **NAPOLEON DOWTHARD**
15 **1555 Yosemite Avenue, #46**
16 **San Francisco, CA 94124**

17 **Applicator License No. RA 51779**

18 Respondent.

Case No. 2013-46

19 **DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

20 FINDINGS OF FACT

21 1. On or about May 17, 2013, Complainant Susan Saylor, in her official capacity as the
22 Interim Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide
23 Regulation, filed Accusation/Petition to Revoke Probation No. 2013-46 against Napoleon
24 Dowthard (Respondent) before the Structural Pest Control Board. (Accusation/Petition to
25 Revoke Probation attached as Exhibit A.)

26 2. On or about February 24, 2011, the Structural Pest Control Board (Board) issued
27 Applicator License No. RA 51779 to Respondent. The Applicator License was in full force and
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1 effect at all times relevant to the charges brought in Accusation/Petition to Revoke Probation No.
2 2013-46 and will expire on February 24, 2014, unless renewed.

3 3. On or about May 28, 2013, Respondent was served by Certified and First Class Mail
4 copies of the Accusation/Petition to Revoke Probation No. 2013-46, Statement to Respondent,
5 Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections
6 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business
7 and Professions Code and section 136, is required to be reported and maintained with the Board.
8 Respondent's address of record was and is: 1555 Yosemite Avenue, #46, San Francisco, CA
9 94124.

10 4. Service of the Accusation/Petition to Revoke Probation was effective as a matter of
11 law under the provisions of Government Code section 11505, subdivision (c) and/or Business &
12 Professions Code section 124.

13 5. On or about June 10, 2013, the aforementioned documents were returned by the U.S.
14 Postal Service marked "Unclaimed."

15 6. Government Code section 11506 states, in pertinent part:

16 (c) The respondent shall be entitled to a hearing on the merits if the respondent
17 files a notice of defense, and the notice shall be deemed a specific denial of all parts
18 of the accusation not expressly admitted. Failure to file a notice of defense shall
19 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
20 may nevertheless grant a hearing.

21 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
22 of the Accusation/Petition to Revoke Probation, and therefore waived his right to a hearing on the
23 merits of Accusation/Petition to Revoke Probation No. 2013-46.

24 8. California Government Code Section 11520 states, in pertinent part:

25 (a) If the respondent either fails to file a notice of defense or to appear at the
26 hearing, the agency may take action based upon the respondent's express admissions
27 or upon other evidence and affidavits may be used as evidence without any notice to
28 respondent.

9. Pursuant to its authority under Government Code section 11520, the Board finds
Respondent is in default. The Board will take action without further hearing and, based on the

1 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
2 taking official notice of all the investigatory reports, exhibits and statements contained therein on
3 file at the Board's offices regarding the allegations contained in Accusation/Petition to Revoke
4 Probation No. 2013-46, finds that the charges and allegations in Accusation/Petition to Revoke
5 Probation No. 2013-46, are separately and severally, found to be true and correct by clear and
6 convincing evidence.

7 10. Taking official notice of its own internal records, pursuant to Business and
8 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
9 and Enforcement are \$1,855 as of June 11, 2013.

10 DETERMINATION OF ISSUES

11 1. Based on the foregoing finding of fact, Respondent Napoleon Dowthard has
12 subjected his Applicator License No. RA 51779 to discipline.

13 2. The agency has jurisdiction to adjudicate this case by default.

14 3. The Structural Pest Control Board is authorized to revoke Respondent's Applicator
15 License based upon the following violations alleged in the Accusation/Petition to Revoke
16 Probation which are supported by the evidence contained in the Default Decision Evidence
17 Packet in this case:

18 a. Business and Professions Code (Code) sections 490 and 8649 (Conviction).

19 b. Failure to comply with Probation Condition No. 2 (Quarterly Reports) by not
20 submitting Quarterly Reports due on February 24, 2012, May 24, 2012, August 24, 2012, and
21 November 24, 2012.

22 c. Failure to comply with Probation Condition No. 4 (Notice to Employers) by not
23 having his present employer, Pestec, report to the Board in writing that the employer has read the
24 decision.

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1 ORDER

2 IT IS SO ORDERED that the Probation that was granted in Case No. 2011-6 is revoked,
3 thereby imposing the disciplinary order that was stayed and revoking Applicator License No.
4 RA 51779 issued to Respondent Napoleon Dowthard.

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6 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
7 written motion requesting that the Decision be vacated and stating the grounds relied on within
8 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
9 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

10 This Decision shall become effective on August 21, 2013.

11 It is so ORDERED July 22, 2013.

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14 FOR THE STRUCTURAL PEST CONTROL
15 BOARD
16 DEPARTMENT OF PESTICIDE REGULATION

17 default decision_LIC.rtf
18 DOJ Matter ID:SF2013901525

19 Attachment:
20 Exhibit A: Accusation/Petition to Revoke Probation